IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMARY SUIT NO.289 OF 2005

Crossword Bookstores Ltd. ...Plaintiff.
Vs.
Minicomp Limited. ...Defendant.

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Mr.Virag Tulzapurkar i/b. Wadia Ghandy & Co. for the Plaintiff.
None for the Defendant.

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CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The suit under Order 37 of the Code of Civil Procedure, 1908, has been instituted in order to recover a sum of Rs.29,59,954/- together with interest at the rate of 18% per annum on the principal amount of the Security Deposit paid by the Plaintiff to the Defendant. An agreement styled as a "Business Centre Agreement" was entered into between the Plaintiff and the Defendant on 15th April 2000 by which the Defendant furnished to the Plaintiff, a facility of the use of a Business Centre. Under clause 6, the Plaintiff deposited a sum of Rs.17,64,400/- as an interest free refundable security deposit. The term of the agreement was of 11 months commencing from 8th May 2000 and ending on 30th March 2001. Clause 8 of the agreement

contemplated three months' notice of termination. Under the proviso to clause 16, the Defendant in the event that it failed to return the security deposit upon termination was liable to pay interest at the rate of 18% per annum (reference to 18% per month being a typographical error). Until the security deposit was paid, the Plaintiff was entitled to continue to use and occupy the premises without compensation or charges. By a notice dated 22nd December 2000, the Plaintiff intimated to the Defendant that it intended to terminate the agreement with effect from 15th February 2001 and to vacate the premises. The Defendant by a letter dated 26th December 2000 expressed its inability to terminate the agreement prior to the expiry of three months' notice. On 29th March 2001, the Plaintiff stated that in view of the period of notice expiring on 21st March 2001, the security deposit should be refunded back so as to enable the Plaintiff to hand over possession. By a letter dated 30th March 2001, the Defendant stated that according to its Accounts Department, Rs.16,29,871/- was due of the deposit after deducting three months' rent and that the deposit would be refunded as soon as possible.

The suit is instituted since the Defendant failed to return

the security deposit. In para 6 of the plaint, it has been stated that the Plaintiff has at all material times been willing to hand over peaceful possession of the premises subject to the Defendant simultaneously refunding the security deposit.

The Defendant has not appeared in response to the writ of summons. Substituted service was required to be effected upon the Defendant. An affidavit proving service has been duly filed. In the additional affidavit dated 24th November 2006, the Plaintiff has stated that the words "without prejudice" were inadvertently printed on the agreement. The Plaintiff has also stated that it has tried to hand over possession of the premises to the Defendant, but the Defendant is not available to take possession of the same.

The claim of the Plaintiff falls within the purview of Order 37 of the Code of Civil Procedure, 1908, since it is based on a written contract. The judgment of a Learned Single Judge of this Court (F.I. Rebello, J) in **Surat Sanghi Finance Ltd. vs. Credential Finance Ltd**.[1] holds that all that is necessary to maintain a summary suit is that the Plaintiff must show that the suit falls within

1 AIR 2002 Bombay 481

the predicates of Order 37. In a given case, even where the Plaintiff has securities available, the Plaintiff has a right to file a suit for recovery of moneys due without proceeding against pledged goods or other collateral securities. In the present case clause 16 of the agreement provides that the Plaintiff is entitled to use and occupy the premises until the security deposit is refunded with interest at the rate of 18% per annum upon termination of the agreement. The Defendant has failed to respond to the summons of the suit. Accordingly, the Plaintiff is entitled to a decree as prayed. The suit accordingly shall stand decreed in terms of prayer clauses (a) and (b).

Refund of Court fee, if any, as per rules.

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